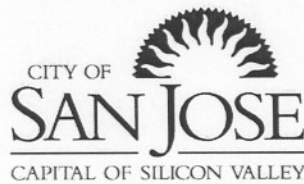


Hem: 3.5
CC Agenda: 11/2/04



Memorandum

TO: City Council

FROM: Mayor Ron Gonzales

SUBJECT: Request for Independent
Investigation Regarding
Councilmember Gregory

DATE: November 2, 2004

Approved

Date

11/2/04

RECOMMENDATION

I recommend that the City Council table discussion of Council Policy 0-28 regarding censure until the Blue Ribbon Task Force on Lobbying and Ethics completes its review and recommendations for any modification.

I wish to inform the Council that I am launching an investigation into any and all allegations against Councilmember Gregory. I will bring to the Rules committee tomorrow a request to place on the agenda an appropriation action for the retention of an independent investigator. At the conclusion of this investigation, I will bring forward the results and my recommendation to the Council for consideration.

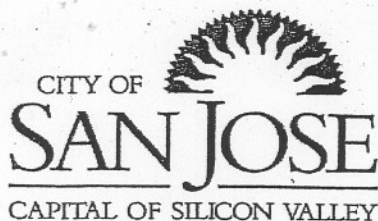
BACKGROUND

Shortly before noon today I received a copy of a wrongful termination claim filed with the City Clerk's Office by Craig Mann, former chief of staff for Councilmember Gregory. His claim (attached) raises very serious allegations about conduct and statements creating a hostile work environment that could expose the City to financial risk and challenge the ethics standards of the City Council.

In response to this claim, I will ask the Rules Committee tomorrow to place the matter of hiring an independent investigator on the agenda for our meeting of November 9. This investigation will consider the specific allegations made by Mr. Mann as well as other allegations about illegal or improper conduct that are relevant to this matter.

In addition I recommend that the Council defer its discussion scheduled for today's meeting regarding the general policy of censure. Two weeks ago we asked the Blue Ribbon Task Force to review the policy and come back to the Council with its specific recommendations. The Task Force is working diligently on this complex matter and has not completed its work. Until we have the results of this effort, the Council should not duplicate the work we have already assigned to the Task Force.

Attachment

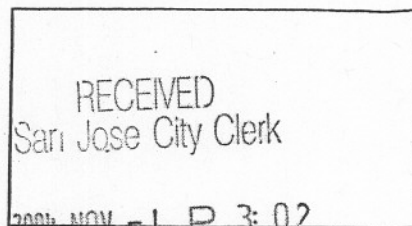


CLAIM AGAINST THE CITY OF SAN JOSE, CA

(For Damages to Persons or Personal Property)

801 North First Street, Room 116
San Jose, CA 95110

City Clerk's Timestamp



Received by: Smd
Via: U.S. Mail ☐
Interoffice Mail ☐
Over the Counter ☒

(Please do not write above this line - for City use only)

Generally, a claim against the City of San Jose for damages to persons or personal property must be filed with the City Clerk of the City of San Jose within six months after the incident occurred. See Government Code 911.2. Where space is insufficient, attach an additional page with the claimant's name on the page. Completed claims (PLEASE PROVIDE THE ORIGINAL AND ONE COPY, INCLUDING ANY ATTACHMENTS) must be mailed or delivered to: City Clerk, City of San Jose, 801 North First Street, Room 116, San Jose, California 95110.

TO THE CLERK of the City of San Jose, California:

The undersigned respectfully submits the following claim and information relative to damage to persons and/or personal property:

NAME OF CLAIMANT CRAIG MANN

DATE OF BIRTH: _____

ADDRESS OF CLAIMANT _____

CITY _____

STATE _____

ZIP CODE _____

HOME PHONE (408) 270-6983

WORK PHONE () _____

DRIVER'S LICENSE STATE AND NUMBER _____

SEND NOTICES REGARDING THIS CLAIM TO: (List name, mailing address and phone number if not same as above.)
Michael Hurley, Esq., 95 So. Market Street, Suite 300, San Jose CA 95113 (408) 995-3278

DATE OF INCIDENT OR OCCURRENCE 01/03/04
CAUSING CLAIM

PLACE (Exact and specific location of incident.)
City Hall

CIRCUMSTANCES (Specify the occurrence, event, act, or omission which you claim caused the injury or damage for which you are submitting this claim.)

(SEE STATEMENT ATTACHED)

CITY'S ACTION (Specify action by City or its employees which caused alleged damage or injury.)

(wrongful termination)

CITY EMPLOYEES' NAMES OR CITY DEPARTMENT INVOLVED IN ALLEGED ACCIDENT OR INCIDENT.

Councilmember Terry O. Gregory

Claim Against the City of San José, California

Claimant

Craig Mann
3315 San Felipe Road PMB # 80
San José, California 95135
(408) 270-6988

Send notices to

Michael Hurley, Esq.
95 South Market Street, Suite 300
San José, California 95113
(408) 995-3278

Incident

January 3, 2004 wrongful termination of employment

Responsible City employee

Councilmember Terry O. Gregory

Specific relief sought

Reinstatement of employment with incidental back pay and benefits retroactive to January 3, 2004, in amounts that would fall within the unlimited jurisdiction of the Superior Court

Circumstances

On December 13, 2002 Councilmember Terry O. Gregory hired me to serve as his chief of staff under an express, oral contract of at-will employment.

Under this employment contract my starting date was January 1, 2003, with a salary of \$75,000 per year plus benefits. Reporting directly to Mr. Gregory, my duties included acting as a deputy department head responsible for staff administration, policy development, media relations, government relations, as well as advising and representing Mr. Gregory in the community and within the City government in the areas of housing and land use, rules committee, airport, redevelopment agency, and others.

In November 2003 Tommy Fulcher, a respected community leader, asked Mr. Gregory and me to meet with him to discuss a matter of great concern. Although Mr. Gregory declined to do so, I did meet with Mr. Fulcher. Mr. Fulcher told me he was very disturbed by reports about Mr. Gregory soliciting and accepting substantial gifts from businesses and individuals who had interests in matters before the City Council. Mr. Fulcher felt that in several cases Mr. Gregory's

actions went well beyond a mere appearance of misconduct. He had hoped to meet directly with Mr. Gregory both to express his concern and to advise him that these activities must come to an end. Our meeting concluded with Mr. Fulcher asking me to tell Mr. Gregory in most emphatic terms that he must immediately "stop soliciting or accepting gifts."

As a result of my meeting with Mr. Fulcher, I was convinced that many activities I had observed as Mr. Gregory's chief of staff were at best unethical, and that more than a few of them appeared to be illegal. The following are some examples I was personally aware of which I believe to be in violation of City the City Code and California Penal Code sections 165 and 653f:

- In January 2003 Mr. Gregory attended a lavish dinner at the Dynasty Restaurant but neither paid for his dinner nor reported it as a gift.
- I observed Mr. Gregory getting free food from King Eggroll, whose management wanted a traffic signal improvement near its business.
- In early April 2003, Mr. Gregory asked me to destroy checks for \$3,430 in contributions made to his 2002 election outside of the campaign contribution period. I suggested that he ought to return them to the donors, but he was adamant that they be destroyed.
- In August 2003 Mr. Gregory had me contact John DiNapoli, who owns a potential major league baseball stadium site in the City, to "remind him of the A's game tickets." I believe that Mr. Gregory solicited and accepted four A's tickets from Mr. DiNapoli.
- With respect to certain ordinances and codes applicable to Costco's Senter Road store, Mr. Gregory pressured Costco vice-president Arthur Jackson to "pay to play" by making contributions to the District 7 community events account.
- Mr. Gregory pressured Amy Hill, community relations director of Wal-Mart to arrange a \$5,000 donation to the District 7 community events account as "pay to play" in return for Mr. Gregory's promise to maintain a "hands-off" posture regarding Wal-Mart's efforts to move into an empty K-Mart on Story Road.

After meeting with Mr. Fulcher, I went to Mr. Gregory and told him what Mr. Fulcher and I had discussed, explaining I had come to the conclusion that some of the things I had seen were probably illegal. When I handed him a copy of the City gift ordinance and told him he had to stop soliciting or accepting gifts, he turned and left the room, closing the door behind him. I also sent an email to all District 7 staff, advising them of my concerns.

Very shortly thereafter, Mr. Gregory angrily told me that my services were "no longer needed," and told me to be out of the office by December 31, 2003.

I believe Mr. Gregory fired me because I confronted him about his unethical and probably criminal behavior, because I told him that he had to put a stop to it, and because I sent the same message to all of my subordinates on the District 7 staff.

When an aide was fired earlier in 2003, Mr. Gregory threatened her, saying that she had better "leave quietly, or else." On more than one occasion Mr. Gregory had commented in my presence on how easy it would be to give a "crack head" \$50 to "take care" of an enemy. Because of comments like these I have been reluctant to bring attention to the circumstances of my unjust dismissal out of fear for my own safety, and fear for the safety of my family.

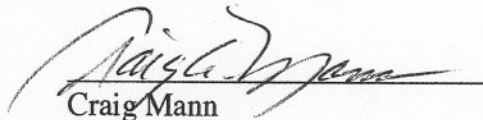
In the summer of 2004 a significant amount of publicity started to appear regarding Dennis Fong bribing Mr. Gregory with a case of expensive wine, and other transactions similar to those about which I had confronted Mr. Gregory after my talk with Mr. Fulcher. On the basis of that publicity, it appeared that the City Council was sure to act promptly and decisively regarding the abundant evidence of Mr. Gregory's corruption that was emerging. For that reason it seemed best for me to allow the City and the District Attorney to complete their investigations before coming forward about the wrongful termination of my employment. But as the months go by I become less and less optimistic, and hence my present claim.

I respectfully request that the City Council give careful consideration to the facts I have presented, look into Mr. Gregory's reasons for the firing me, and do the right thing by reinstating my employment and providing me with back pay and benefits retroactive to January 3, 2004.

Verification

I declare under penalty of perjury that the matters stated as fact herein are true as of my own knowledge. With respect to the matters stated upon information and belief, I believe them to be true.

Executed on November 1, 2004, in San José, California.


Craig Mann